CR 176/06

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CIVIL REVISION PETITION NO.176/2006

Abdul Salam @ Bullan

Versus

Kamruddin & Anr.

DATE OF ORDER :: 12/12/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Shrey Gaharana, for petitioner

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Instant revision petition has been filed by the defendant-petitioner against the order dated 26th August, 2006 whereby application filed by him under O.41 R.2 CPC has been rejected by the learned Additional District Judge [Fast Track] No.5, Jaipur City, Jaipur in First Appeal No.33/06.

Non-petitioner-plaintiff filed a suit for eviction and default in payment of rent against the present petitioner-defendant which was finally decreed on 22nd October, 2003. Against which, petitioner preferred a Regular First Appeal which is pending adjudication.

It is pertinent to mention at this stage that during pendency of the suit, Shri Kamruddin, who was one of the plaintiffs, died and on filing application under O.22 R.3 CPC by plaintiff No.2, the same was allowed and the legal heirs of Kamruddin were brought on record.

Counsel for revision petitioner submits that despite legal heirs of Kamruddin were brought on

record in the final judgment and decree passed by the learned trial Judge, the name of dead person i.e. original plaintiff, Kamruddin was taken note of and according to him, no decree could have been passed in favour of dead person after filing appeal against the said judgment and decree. Pending thereof, application was moved under O.41 R.27 CPC for taking legal grounds for assailing the judgment and decree of the learned trial Judge dated 22nd October, 2003 inter alia on the additional ground that since the judgment and decree was passed against dead person, which according to him, is nullity and is not to be carried out against them.

Learned Appellate Judge appreciating the submission made in the application filed under O.41 R.2 CPC observed that since the legal heirs of Kamruddin were brought on record as plaintiff Nos. 1/1 to 1/7 and which is evident from order-sheet of the court dated 29th July, 1998, such typographical error, if there is any in the cause title will not be considered to hold that the decree has been passed against dead person and find no substance in the additional plea which he intended to raise in his application under O.41 R.2 CPC.

I have gone through the order of the learned Appellate Court dated 26th August, 2006 and I do not find any infirmity in the order impugned.

Consequently, the revision petition fails and is hereby dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.